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Collective Plaintiffs*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**SALIM SHAHRIAR, MUHAMMAD ISLAM,
AND MARY HARVEY on behalf of
themselves and all others similarly situated,**

INDEX NO: 08-cv-00057

Plaintiffs,

v.

**SMITH & WOLLENSKY RESTAURANT
GROUP, INC. d/b/a PARK AVENUE
RESTAURANT AND FOURTH WALLS
RESTAURANTS LLC, d/b/a PARK
AVENUE RESTAURANT,**

Defendants.

-----X

DECLARATION OF MARY HARVEY

I, Mary Harvey, under penalty of perjury, affirm as follows:

1. I was employed by Defendants as a waitress at Park Avenue Café within the last three years.
2. Throughout my employment at Park Avenue, I was paid less than the federal minimum wage.

3. When I began working for Park Avenue, each individual server was required to share her tips with several employees, including runners, coffee makers, silverware polishers and expeditors.

4. The coffee makers with whom we shared tips never communicated with customers or provided direct customer service. Their job duties were simply to make coffee. These employees were listed under the "coffee" category in the tip-out sheets.

5. The coffee makers with whom I was required to share tips included Sayid Hussain and Roy Nantu.

6. Similarly, the expeditors with whom we shared tips primarily called food orders into the kitchen, and the silver/glass polishers polished silver and glass. None of these employees ever communicated with customers or provided direct customer service.

7. The silver/glass polishers with whom I was required to share tips included Peppe Bhuit.

8. The expeditors with whom I was required to share tips included Saha (last name unknown), Fausto Gomez, and Carlos Fernandez.

9. To the best of my recollection, expeditors were listed under the "runner" categories in the tip-out sheets, and silver/glass polishers under "dish."

10. Attached as Exhibit A is a copy of a tip-out sheet used in 2001. This tip-out sheet reflects the tip-out procedures at Park Avenue until the middle of 2007, when Park Avenue began to pool our tips. The categories described above (runners, dish and coffee) are reflected in the attached tip-out sheets.

11. In the middle of 2007 Santiago Pasentez became an assistant general manager at Park Avenue.

12. Around this time, Park Avenue required employees to participate in a tip-pool.

13. I was never asked whether I wanted to be in the tip-pool, and the terms of the tip pool were maintained and enforced by the restaurant's management, not the servers or similarly tipped employees.

14. Park Avenue continued to require us to share tips with silver polishers, expeditors and coffee makers by placing them in the tip-pool.

15. Attached as Exhibit B is a copy of a tip-pool sheet from a night that I worked at Park Avenue. This tip-pool sheet shows that Park Avenue illegally required us to share tips with Mr. Fernandez, Mr. Hussain, Mr. Bhuit and Mr. Nantu.

16. After the implementation of the tip-pool at Park Avenue, Park Avenue required us to share our tips with managers, by allowing the managers to be part of the tip-pool.

17. For example, Roger Moler, a manager at the restaurant and referred to by all employees as a manager, participated in the tip-pool.

18. In an attempt to conceal Roger's participation in the tip-pool, his share is reflected in the "Barista" section of the tip-out sheet, under the initials 'RM' instead of his full name.

19. Roger's job duties were to manage the restaurant and the bar, and he was introduced to us as a manager.

20. Roger frequently closed the restaurant, and we needed Roger's permission to leave the restaurant.

21. I witnessed employees disciplined by Roger.

22. Roger's primary job duties include: (a) supervising all activity on the floor, (b) disciplining employees, (c) dealing with customer complaints, (d) holding daily meetings with servers in preparation for each shift, (e) verifying the money reports at the end of each night, (f) sending employees home early if necessary, and (g) selling wine.

23. Roger was frequently the most senior employee present in the restaurant.

24. When a customer asked to speak to a manager, they were often referred to Roger.

25. Roger had special cards or access codes with which he could access the computer system to perform managerial functions such as changing the prices of items, comping items, voiding checks, reopening closed checks, reauthorizing checks, etc.

26. Since the tip-pool was imposed on us, Park Avenue never provided us with any accounting regarding how tips were distributed. They simply hand us our envelopes with money the following day. Accordingly, I have no way of knowing whether all of the tip money received on any given night is distributed into the tip-pool.

27. When I asked for an accounting of the tip-appropriation, I was told by management that the information is confidential.

I affirm, under penalty of perjury, that the above and foregoing information is true and correct.

Dated: New York, New York
February 20, 2008

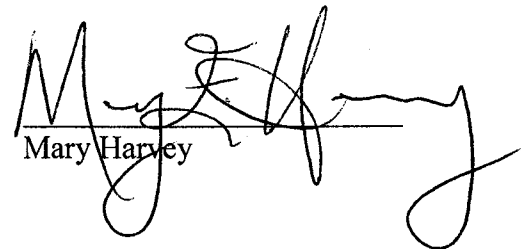

Mary Harvey

EXHIBIT A

EXHIBIT B

Park Avenue
Dining Room Tip Sheet

DINNER
Saturday
October 20, 2007

Points

Captains	Points	Cash Tips	C/C Tips	Tip Total
1 Andy Rankin	6	\$24.62	\$235.06	\$259.68
2 Ariel Ojeda	6	\$24.62	\$235.06	\$259.68
3 Jeff Fritz		\$0.00	\$0.00	\$0.00
4 Larry Sayward		\$0.00	\$0.00	\$0.00
5 Liz Laufer	6	\$24.62	\$235.06	\$259.68
6 Michael Naranjo	6	\$24.62	\$235.06	\$259.68
7 Remy Pilly		\$0.00	\$0.00	\$0.00
8 Sal Shahiar		\$0.00	\$0.00	\$0.00
9 Sam Islam		\$0.00	\$0.00	\$0.00
10 Quincy Loring	6	\$24.62	\$235.06	\$259.68
11 Bobbi Kim	6	\$24.62	\$235.06	\$259.68
12 Thom Cyburt		\$0.00	\$0.00	\$0.00
13 Sean Montgomery	6	\$24.62	\$235.06	\$259.68
14 Jordan Reeves		\$0.00	\$0.00	\$0.00
15 Suzanne Stone	6	\$24.62	\$235.06	\$259.68

Bartenders	Points	Cash Tips	C/C Tips	Tip Total
1 0		\$0.00	\$0.00	\$0.00
2 0		\$0.00	\$0.00	\$0.00
3 0		\$0.00	\$0.00	\$0.00
4 Sorina Max	6	\$24.62	\$235.06	\$259.68
5 Melissa Bart		\$0.00	\$0.00	\$0.00
6 Tessa		\$0.00	\$0.00	\$0.00
7 x		\$0.00	\$0.00	\$0.00
8 x		\$0.00	\$0.00	\$0.00
9 0		\$0.00	\$0.00	\$0.00

Waiters / Runners	Points	Cash Tips	C/C Tips	Tip Total
1 Carlos Torres	4.5	\$18.46	\$176.29	\$194.76
2 David Cazares	4.5	\$18.46	\$176.29	\$194.76
3 Emin Gavrilov	4.5	\$18.46	\$176.29	\$194.76
4 Mahbub Malik	4.5	\$18.46	\$176.29	\$194.76
5 Mr.B Sarker		\$0.00	\$0.00	\$0.00
6 Ramiro Valdez	4.5	\$18.46	\$176.29	\$194.76
7 Shuhel Ahmed	4.5	\$18.46	\$176.29	\$194.76
8 Vincent Herrera	4.5	\$18.46	\$176.29	\$194.76
9 Olisian Khakollanpi		\$0.00	\$0.00	\$0.00
10 Feliciano Hernandez	4.5	\$18.46	\$176.29	\$194.76
11 JD Naranjo		\$0.00	\$0.00	\$0.00
12 Valentino Flores		\$0.00	\$0.00	\$0.00
13 Rajib Das	2	\$8.21	\$78.35	\$86.56
14 0		\$0.00	\$0.00	\$0.00
15 0		\$0.00	\$0.00	\$0.00
16 Saha Jayanta		\$0.00	\$0.00	\$0.00
17 Carlos Fernandez	4.5	\$18.46	\$176.29	\$194.76
18 0		\$0.00	\$0.00	\$0.00
19 Adrian Amigon	4	\$16.41	\$156.71	\$173.12
20 Enamul Shakur	4	\$16.41	\$156.71	\$173.12
21 Islam Mohamed		\$0.00	\$0.00	\$0.00
22 Lipton Barman		\$0.00	\$0.00	\$0.00
23 Saruk Miah	4	\$16.41	\$156.71	\$173.12
24 Mr T	4	\$16.41	\$156.71	\$173.12
25 0		\$0.00	\$0.00	\$0.00
26 0		\$0.00	\$0.00	\$0.00
27 David Ward	6	\$24.62	\$235.06	\$259.68
28 0		\$0.00	\$0.00	\$0.00
29 Mary Harvey	4	\$16.41	\$156.71	\$173.12
30 Kendra Treichler	4	\$16.41	\$156.71	\$173.12
31 0		\$0.00	\$0.00	\$0.00

Barista	Points	Cash Tips	C/C Tips	Tip Total
1 Pepe Bhuit		\$0.00	\$0.00	\$0.00
2 Roy Nantu	2.5	\$10.26	\$97.94	\$108.20
3 Syed Hussain	2.5	\$10.26	\$97.94	\$108.20
4 Kanti		\$0.00	\$0.00	\$0.00
5 0		\$0.00	\$0.00	\$0.00
6 RM	4	\$16.41	\$156.71	\$173.12